

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

October 22, 2013 at 2:00 p.m.

1. [13-31805](#)-C-13 FERNANDO PARRA MOTION TO VALUE COLLATERAL OF
SNM-1 Stephen N. Murphy NAVY FEDERAL CREDIT UNION
Thru #2 9-10-13 [[8](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1208 Pheasant Drive, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$155,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$202,716.00. Navy Federal Credit Union's second deed of trust secures a loan with a balance of approximately \$78,778.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in

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the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Navy Federal Credit Union secured by a second deed of trust recorded against the real property commonly known as 1208 Pheasant Drive, Suisun City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$155,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

2.	<u>13-31805</u> -C-13 SNM-2	FERNANDO PARRA Stephen N. Murphy	MOTION TO VALUE COLLATERAL OF NAVY FEDERAL CREDIT UNION 9-10-13 [<u>13</u>]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1208 Pheasant Drive, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$155,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$202,716.00. Navy Federal Credit Union's third deed of trust secures a loan with a balance of approximately \$64,160.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is granted and
the claim of Navy Federal Credit Union secured
by a second deed of trust recorded against the
real property commonly known as 1208 Pheasant
Drive, Suisun City, California, is determined
to be a secured claim in the amount of \$0.00,
and the balance of the claim is a general
unsecured claim to be paid through the
confirmed bankruptcy plan. The value of the
Property is \$165,250 and is encumbered by
senior liens securing claims which exceed the
value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on September 5, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. [13-27113](#)-C-13 ALAN/ELAINE WEMPLE
TJW-1 Timothy J. Walsh
Thru #5

CONTINUED MOTION TO VALUE
COLLATERAL OF JP MORGAN CHASE
BANK, N.A.
7-1-13 [[17](#)]

Local Rule 9014-1(f)(1) Motion - Opposition and Stipulation Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 1, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value is dismissed without prejudice as moot. No appearance is required. The court makes the following findings of fact and conclusions of law:

On August 6, 2013, the court heard Debtor's Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. The court continued the matter to permit Creditor Chase to obtain a verified appraisal of the subject property.

The property at issue is commonly known as 627 Montezuma Street, Rio Vista, California. The Debtor sought to value the property at a fair market value of \$150,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$163,983,000. JPMorgan Chase Bank N.A.'s second deed of trust secures a loan with a balance of approximately \$93,747. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. However, the creditor filed an opposition disputing the debtor's proposed valuation.

JPMorgan Chase submitted as "Exhibit C" its own Broker's Price Opinion, which evidences the value of the property at \$185,000. This would make JPMorgan Chase's lien partially secured. Creditor requests that this motion be continued to allow them to obtain a verified appraisal of the subject property. Furthermore, Creditor requests the cooperation of the

Debtors in permitting them to obtain an appraisal.

The court granted a continuance to permit appraisal.

On September 30, 2013, the court approved a stipulation and agreement reached between Creditor and Debtor. The terms of the Stipulation value the subject property at \$139,000.00 and value Creditor Chase's claim in the amount of \$93,667.40 as a fully unsecured claim. Creditor Chase shall retain its lien for the full amount due under its loan in the event of either dismissal or conversion of Debtors' case. The subject property is not to be sold prior to the end of the case without seeking court approval and Creditor Chase shall retain its lien for the full amount due under its loan if the property is sold or if a refinance takes place prior to the completed of Debtor's Chapter 13 plan and the entry of a discharge.

As the Stipulation resolves the pending Motion, the Motion shall be dismissed without prejudice as moot. The court shall issue a minute order substantially in the following form, holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) dismissed
without prejudice as moot.

5. [13-27113](#)-C-13 ALAN/ELAINE WEMPLE MOTION TO CONFIRM PLAN
TJW-2 Timothy J. Walsh 8-6-13 [\[37\]](#)

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2013. Forty-two days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's

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resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects to confirmation of Debtors' plan on the grounds that the Trustee's objection to confirmation, heard and sustained on July 23, 2013, remains unresolved.

On July 23, 2013, the court sustained the following objection to confirmation made by the Trustee:

1. At the First Meeting of Creditors, Debtors stated that \$440.28 listed as a "Business Expense" for a medical expense may have been listed in error. Debtors further admitted that a "business phone" expense listed for \$570.61 appears to be inflated. Debtors stated it should be listed as \$300.00 per month.
2. Debtors did not include an office rental space expense in the "Business Income and Expenses."

The court sustained Trustee's objection, in part, on these grounds.

On August 1, 2013, Debtors made the following changes to Schedule J:

	Original Sched. J	Amended J	Difference
Food	\$450.00	\$550.00	\$100.00
Medical/Dental	\$62.00	\$502.28	\$440.28
Installment-Auto	\$0.00	\$318.38	\$318.38
Business Expenses	\$3,076.57	\$2,636.79	(\$439.78)
Student Loan	\$220.00	\$0.00	(\$220.00)

Debtors' Declaration, filed August 6, 2013, states that the plan is being changed because of an error in calculations on Schedule I and J. Trustee states the Debtors have not resolved his objection and the declaration does not shed light as to why their business expenses were reduced by \$439.78 and their medical expenses were increased by \$440.28.

Debtors did not provide a detailed business expense report with their Amended Schedule J. It remains unclear whether the office rental space expense is included in Debtors' calculation and Debtors have not sufficiently explained the reduction in business expenses and increase in medical expenses.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

6. [13-31914](#)-C-13 DARCEY/GAYE ADAMS MOTION TO VALUE COLLATERAL OF
JT-1 John A. Tosney TRAVIS CREDIT UNIONI
9-18-13 [[11](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 18, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 472 Beelard Drive, Vacaville California. The Debtor seeks to value the property at a fair market value of \$171,800.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$295,908.00. Travis Credit Union's second deed of trust secures a loan with a balance of approximately \$59,828.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely

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under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Travis Credit Union secured by a second deed of trust recorded against the real property commonly known as 472 Beelard Drive, Vacaville California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$171,800.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

7.	<u>13-32815</u> -C-13	GARTH/LESLIE ERVIN Mikalalah R. Liviakis	MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 10-6-13 [<u>14</u>]
	MRL-1		

Local Rule 9014-1(f) (2) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 6, 2013. 28 days' notice is required. That requirement was not met.

Tentative Ruling: The Motion to Value Collateral has been incorrectly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). Because the Motion was set with fewer than 28 days to the hearing, it will be reset pursuant LBR 9014-1(f) (2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the

court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4504 Justine Avenue, Diamond Springs, California. The Debtor seeks to value the property at a fair market value of \$192,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$199,153.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$80,560.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 4504 Justine Avenue, Diamond Springs, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to

be paid through the confirmed bankruptcy plan.
The value of the Property is \$192,000.00 and
is encumbered by senior liens securing claims
which exceed the value of the Property.

8. [13-29216](#)-C-13 ROBERT FINE MOTION TO CONVERT CASE FROM
DEF-2 David Foyil CHAPTER 13 TO CHAPTER 11
9-18-13 [[27](#)]

CASE DISMISSED 10/5/13

Final Ruling: The case having previously been dismissed on October 5, 2013, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Convert Case from Chapter
13 to Chapter 11 having been presented to the
court, the case having been previously dismissed,
and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied
as moot.

9. [13-30319](#)-C-13 BELLA DELA PAZ OBJECTION TO CONFIRMATION OF
MDP-1 Najeeb U. Kudiya PLAN BY WELLS FARGO BANK, N.A.
Thru #10 9-19-13 [[44](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 19, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there

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will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Wells Fargo Bank, opposes confirmation of the Plan for the following reasons:

1. Debtor's plan does not provide an adequate interest rate on Wells Fargo's arrearages. 11 U.S.C. § 1325(a). Debtor proposes to pay no interest on Wells Fargo's arrearages. Creditor cites *Till v. SVS Corp* as standing for the proposition that the proper rate of interest to be paid in these circumstances involves a calculation that starts with the prime rate and then adjusts it upward, depending on risk in the case. 541 U.S. 465, 479 (2004). Wells Fargo does not accept its treatment under the plan.
2. The classification of Wells Fargo in Class 1 and Class 4 of the Plan is ambiguous and confusing. Class 4 provides for "Wells Fargo/David Fix for Casey Court" and includes the monthly contract installment of \$2,618.09, which is also provided in Class 1.
3. Debtor incorrectly identifies Wells Fargo in her Schedules. Wells Fargo is identified as "Wells Fargo Bank Home Mortgage" located in Winston Salem, NC. However, the designation for Wells Fargo is "Wells Fargo Bank, N.A., 21 1st Street SW, Rochester, MN 55902."
4. The plan is lacking certain disclosures. Specifically, it should clarify that upon confirmation of the plan, the property securing Wells Fargo's note is no longer property of the estate and that the automatic stay would no longer apply to the property.

Discussion

The court's decision is to sustain the objection on the grounds that Debtor needs to provide for interest on Wells Fargo's arrearages, clarify the classification of Wells Fargo in the Plan, and correct the misidentification of Wells Fargo in Debtor's Schedules. The court is amendable to permitting Debtor to make these adjustments in the Order Confirming the Plan. The court does not see it necessary to include in the Plan language informing Wells Fargo of its post-confirmation rights.

Regarding the interest rate issue, in *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated

as a decision of the Court). Even before Till, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *Farm Credit Bank of Spokane v. Fowler (In re Fowler)*, 903 F.2d 694 (9th Cir. 1990)). With the prime rate hovering around 3.25%, the court adds an additional 1.25% bankruptcy adjustment, and requires that the interest rate be 4.50% per annum. The plan should propose a 4.50% interest rate.

As it stands, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. However, the court remains amenable to permitting Debtor to make these corrections in the Order Confirming the Plan if Debtor so desires.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

10.	13-30319 -C-13	BELLA DELA PAZ	OBJECTION TO CONFIRMATION OF
	NLE-1	Najeeb U. Kudiya	PLAN BY DAVID CUSICK
			9-17-13 [40]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 26, 2013. 14 days' notice is required. That requirement was met.

No Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g)., if there is opposition, the court may reconsider this tentative ruling.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because it relied on the valuing of Green Tree Servicing's secure claim, which is listed in Class 2C of the plan. Debtor has not filed a Motion to Value the secured claim and if the Motion is not filed and granted, Debtor does not have sufficient monies to pay the claim in full. 11 U.S.C. § 1325(a)(6).

Debtor's Reply

Debtor replies, stating that a Motion to Value the secured claim of Green Tree Servicing was filed on September 26, 2013 and is set for hearing on November 19, 2013 at 2:00 pm.

There court has not issued a tentative ruling on this Objection. While the court would normally continue this motion to be heard on the same calendar as Motion to Value, an alternate Objection to Confirmation, filed by Wells Fargo, is set to be sustained by the court (Dkt. 44). This would render Trustee's Motion moot. Alternatively, if Debtor decides to correct the issues outlined in Wells Fargo's objection in the Order Confirming the Plan, Trustee's Motion would remain on calendar and continued to November 19, 2013 at 2:00 pm.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to
confirmation of the Plan is ----- .

11. [13-28921](#)-C-13 BURT/LORI HESTAND
NF-1 Nikki Farris

MOTION TO VALUE COLLATERAL OF
SIERRA CENTRAL CREDIT UNION
9-6-13 [[21](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 6, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3577 Hilldale Avenue, Oroville, California. The Debtor seeks to value the property at a fair market value of \$187,559.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$215,508.00. Sierra Central Credit Union's second deed of trust secures a loan with a balance of approximately \$32,291.96. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Sierra Central Credit Union secured by a second deed of trust recorded against the real property commonly known as 3577 Hilldale Avenue, Oroville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$1187,559.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

12. [13-28921](#)-C-13 BURT/LORI HESTAND MOTION TO CONFIRM PLAN
NF-2 Nikki Farris 9-6-13 [[26](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2013. Forty-two days' notice is required. That requirement was met.

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects to confirmation of Debtors' plan on the following grounds:

1. Section 2.06 of the Plan indicates attorney fees are due through the plan; however, Section 2.07 lists the monthly administrative dividend at \$0.00.

2. The plan is no Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors' amended Schedule J reflects significant adjustments in several expenses. No explanation is provided, except that Debtors reevaluated their expenses and realized they are higher than originally thought. Debtors' original Schedule listed Net Income of \$2,180.42. The Amended Schedule reflects Net Income of \$1,400.59.

Debtors' original plan proposed to pay 100% of unsecured debts. Debtor is currently over the median income and the amended plan is proposing plan payments of \$1,400.00 for 60 months with a 12% dividend to unsecured creditors. Form B22C reflects monthly disposable income of \$4,248.76. Based on the applicable commitment period, unsecured creditors are entitled to receive \$254, 925.00, or 100% of unsecured debts.

Trustee requests further written evidence of the actual expenses, such as six months of bills and bank statements.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed. Debtors needs to provide Trustee with the requested materials and ensure that their plan reflects their best efforts, including transparent disclosure of information.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is ----- .

13. [13-30323](#)-C-13 KIMBERLY JOHNSTON OBJECTION TO CONFIRMATION OF
NLE-1 James L. Brunello PLAN BY DAVID CUSICK
9-26-13 [[14](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 26, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor,

the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is continue the hearing on the Objection to Confirmation to November 19, 2013 at 2:00 pm. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a Motion to Value the secured claim of Green Tree and, as of the time of Trustee's Objection, Debtor had not filed a Motion to Value. If the Motion is not filed and granted, Debtor's plan does not have sufficient monies to pay the claim in full.

Debtor's Response

Debtor responds to the Trustee's Objection, stating that a Motion to Value the secured claim of Green Tree was filed on September 26, 2013 and is set for hearing on November 19, 2013 at 2:00 pm.

As confirmation of Debtor's plan relies on the court granting Debtor's Motion to Value, set for hearing on November 19, 2013, the court's decision is to continue the hearing on Trustee's Objection to Confirmation until November 19, 2013 at 2:00 pm.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation is continued to November 19, 2013, to be heard concurrently with the Motion to Value the secured claim of Green Tree servicing.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 11, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 11846 Herodian Drive, Rancho Cordova, California. The Debtor seeks to value the property at a fair market value of \$251,556.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$368,646.37. Wilmington Trust, National Association's second deed of trust secures a loan with a balance of approximately \$89,237.83. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wilmington Trust, National Association secured by a second deed of trust recorded against the real property commonly known as 11846 Herodian Drive, Rancho Cordova, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$251,556.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

15. [11-41829](#)-C-13 MICHELE WILLIAMS MOTION TO MODIFY PLAN
PGM-6 Peter G. Macaluso 9-12-13 [[117](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on September 12, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [13-27429](#)-C-13 RYAN/LAURA CASELLA MOTION TO CONFIRM PLAN
JSO-1 Jeffrey S. Ogilvie 9-6-13 [\[19\]](#)

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 16, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17.	13-27531 -C-13 LEONARDO/VALERIE CHAVEZ TSB-1 Richard A. Chan	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-10-13 [22]
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2013. 14 days' notice is required. That requirement was met. Matter was continued to August 13, 2013 for the court to hear the Motion to Value Collateral that forms the basis for the Trustee's Objection.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other

issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Chapter 13 Trustee originally objected to confirmation of Debtors' plan because the plan relied on a pending Motion to Value the secured claim of Real Time Resolutions. The hearing on the motion was continued from August 13, 2013 because Debtors and the court determined that the actual Creditor is Bank of New York Mellon. The continuance permitted service of the Motion to Value.

On September 24, 2013, the court entered an order granting the Motion to Value the secured claim of Bank of New York Mellon (Dkt. 34). When the court granted Debtors' Motion to Value, it resolved Trustee's objection. Therefore, the Trustee's Objection is overruled as the plan now complies with 11 U.S.C. §§ 1322 and 1325(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to
confirmation the Plan is overruled and the
proposed Chapter 13 plan is confirmed. Counsel
for the Debtor shall prepare an appropriate
order confirming the Chapter 13 Plan, transmit
the proposed order to the Chapter 13 Trustee
for approval as to form, and if so approved,
the Chapter 13 Trustee will submit the
proposed order to the court.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtor incorrectly states in Section 6.01 that \$1,355.00 has been/will be paid as of September 25, 2013. The actual amount is \$1,305.00.

Debtor's Reply

Debtor replies, stating that she agrees with the Trustee's objection and will make the correction in the order conforming the plan.

The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed with the understanding that in the Order Confirming the Plan Debtor will correct the amount paid as of September 25, 2013 to reflect an amount of \$1,305.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified
Chapter 13 Plan filed by the Debtors having
been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 13, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that in the Order Confirming the Plan Debtor will correct the amount paid as of September 25, 2013 to reflect an amount of \$1,305.00

19. [13-24532](#)-C-13 HENRY/DEBBIE MAZUR MOTION TO CONFIRM PLAN
SJJ-3 Stephen J. Johnson 9-6-13 [[49](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2013. Forty-two days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Chapter 13 Trustee objects to confirmation of Debtors' plan because Debtors may not be able to make payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6), or the plan, as proposed, may not be Debtors' best efforts, 11 U.S.C. § 1325(b), for the following reasons:

1. Debtors' original plan called for payments of \$150.00 per month for 36 months paying no less than 0.5% to unsecured

claims. Debtors current plan proposes to pay their Second Deed of Trust in Class 4 of the plan directly to Wells Fargo in the amount of \$159.12 per month.

2. On Debtors' amended Schedule I, income is increased by \$160.00 per month. The source of the income is "Additional Anticipated Income Since Filing of Case." The only change on the amended Schedule J is adding the payment to Wells Fargo of \$159.12.
3. On August 19, 2013, Debtor and Wells Fargo entered into a stipulation reducing the balance on Wells Fargo's Second Deed of Trust to \$15,000.00 at 5% interest, payable over 120 months at \$159.12 per month beginning September 15, 2013. Trustee did not sign on to the stipulation because it caused Debtors' budget to become negative.
4. Trustee is concerned that Debtors do not have the ability to make the payment. Debtors do not explain the increase in income and it appears Debtors either have more money than scheduled or Debtors cannot afford the plan payment proposed.

Debtors' Reply

Debtors offer the following reply to the Trustee's objection to plan confirmation. First, Debtors state that there was a marginal error of \$160.00 (or approximately 5%) that was not accounted for when anticipating their income at the time of filing. Second, The additional 5% will resolve Trustee's concern that Debtors will be unable to maintain the agreement with Wells Fargo. Finally, Debtors recognize that their Chapter 13 plan will leave Debtors under a tight budget, but it represents their best chance for a stable financial future.

Discussion

As a result of Debtor's stipulation with Wells Fargo, Debtor was obligated to commence a sequence of 120 payments in the amount of \$159.12 beginning September 15, 2013. Debtor filed an amended plan and set it for confirmation on September 6, 2013. Debtor's original income, as represented on Debtor's Schedule I, was an amount insufficient for Debtor to make its original plan payments in addition to payments to Wells Fargo. Therefore, Debtor submitted a partially amended Schedule I, adding "Additional Anticipated Income Since Filing of Case" in the amount of \$160.00. This amount conveniently satisfied Debtors' obligation to Wells Fargo.

In Debtors' response, they characterize the additional \$160.00 as an amount "not accounted for when anticipating income at the time of filing." On the amended Schedule I, Debtor characterize the additional \$160.00 as "Anticipated Income Since Filing of Case." Debtor has provided no other information explaining where it found the additional \$160.00 in income and makes no statement assuaging the Trustee's and court's concern regarding whether this plan represents the best efforts of the Debtor.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

20.	<u>13-30534</u> -C-13 STELLA DOMINGUEZ NLE-1 Scott J. Sagaria	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 9-17-13 [<u>24</u>]
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Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan relies on Motions to Value the secured claims of Nationstar and Onemain Financial. If the motions are denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). The Motions are set for hearing on September 17, 2013.
2. Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6) because Debtor lists the mortgage payment in Class 4 of the plan in the amount of \$1,878.00; however, Debtor

lists the mortgage payment amount as \$500.00 on Schedule J.

The court's decision to sustain the objection and deny confirmation. Debtor's Motion to Value the secured claim of Onemain Financial was granted; however, the court denied the Motion to Value the secured claim of Nationstar. On October 7, 2013, Debtor set for hearing a Motion to Value the secured claim of Mortgage Electronic Registration System as Nominee for RBS Citizens, N.A., Nationstar Mortgage, LLC. This Motion concerns the same property subject to Debtor's previous Motion to Value secured claim of Nationstar Mortgage. The court is set to hear the Motion on November 5, 2013. Therefore, Trustee's concern regarding whether Debtor can afford to make payments persists until the Motion to Value is resolved. Furthermore, Debtor has not addressed Trustee's concern regarding the mortgage payment discrepancy.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

21.	13-30535 -C-13	INGAR ROSS	OBJECTION TO CONFIRMATION OF
	NLE-1	Pro Se	PLAN BY DAVID CUSICK
			9-26-13 [27]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor (*Pro Se*) on September 26, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's

tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

- a. Debtor did not appear at the First Meeting of Creditors held on September 19, 2013. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Meeting was continued to October 17, 2013 at 10:00 am.
- b. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
- c. Debtor has not responded to Trustee's inquiries concerning Debtor's business.
- d. Debtor's plan does not pass the Chapter 7 Liquidation Analysis. Debtor's non-exempt equity totals \$6,400.00, as no personal property was claimed exempt. Debtor's plan does not propose a dividend to unsecured creditors and Debtor did not complete Schedule C. 11 U.S.C. § 1325(a)(4).
- e. Debtor's Schedule J reflects monthly net income of (\$516.47), this is insufficient to support plan payments of \$441.00. 11 U.S.C. § 1325(a)(6).
- f. Furthermore, Debtor's Chapter 13 documents are incomplete:
 - i. Schedule J does not list any expenses or Debtor's real property taxes.
 - ii. No business expenses were listed on Schedule J despite Debtor stating she is seeking to rebuild her business.
 - iii. Section 2.08 of the plan is incomplete as Debtor did not list an arrearage dividend and a monthly contract installment amount.
 - iv. Section 2.15 of the plan is blank; Debtor did not list a dividend to the unsecured creditors.
 - v. The Board of Equalization is listed on Schedule E but not provided for in Debtor's plan.

The Plan is deficient in several respects and does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

22. [12-33836](#)-C-13 JIM/CAROL NICOL MOTION TO MODIFY PLAN
CAH-1 C. Anthony Hughes 9-6-13 [[22](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the Motion to Confirm the Modified Plan to [date] at [time] Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because it calls for a 2012 post-petition tax claim of the IRS to be paid without a proof of claim. The Internal Revenue Service has not amended its claim to include the 2012 post-petition taxes and Debtor cannot file the claim on behalf of the creditor pursuant to 11 U.S.C. § 1305.

Debtors' Reply

Upon receiving Trustee's objection, Debtor contacted the IRS to resolve the issue. However, due to the government shutdown, no live operators or agents were available to make the changes. Debtor requests the court continue the hearing on confirmation to grant time for the government to hopefully re-open and resolve this issue.

The court's decision is to continue the matter to grant time for the government to re-open and for Debtor to work with the IRS in resolving this matter.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is continued to **[date]** at **[time]**.

23.	13-30640 -C-13 EWV-30 <u>Thru #24</u>	WILLIE SMITH Eric W. Vandermey	MOTION TO VALUE COLLATERAL OF HOUSEHOLD FINANCE CORPORATION OF CALIFORNIA 9-13-13 [16]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 13, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

October 22, 2013 at 2:00 p.m.

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The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 317 Promenade Circle, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$153,247.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$277,401.00. Household Financial Corporation of California's second deed of trust secures a loan with a balance of approximately \$29,457.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is granted and
the claim of Household Financial Corporation
of California secured by a second deed of
trust recorded against the real property
commonly known as 317 Promenade Circle, Suisun
City, California, is determined to be a
secured claim in the amount of \$0.00, and the
balance of the claim is a general unsecured
claim to be paid through the confirmed
bankruptcy plan. The value of the Property is
\$153,247.00 and is encumbered by senior liens
securing claims which exceed the value of the
Property.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan relies on a Motion to Value the secured claim of Household Finance. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. /11 1325(a)(6).
2. Debtor's plan proposes to pay \$6,000.00 in attorney fees; however, Debtor's case is non-business in nature and the maximum fee that may be charged in a non-business case is \$4,000.00. Local Bankr. R. 2016-1(c)(1). Debtor's counsel must make a separate motion to approve fees of \$6,000.00.

The court's decision to sustain the objection and deny confirmation. While Debtor's Motion to Value the secured claim of Household Finance is set to be granted at the October 22, 2013 hearing, resolving that issue, Debtor's counsel has not set for hearing a motion to approve additional attorney's fees.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

25. [12-36646](#)-C-13 MICHAEL/AUDREY FEISE MOTION TO MODIFY PLAN
EJS-2 Eric John Schwab 9-4-13 [[40](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Trustee is unsure of proposed plan payments. The additional provisions of the proposed modified plan lists plan payments as "Pay a total of \$16,984.00 from October 2012 through August 2013," "Pay \$2,269.00 per month from September 2013 through July 2014," and "Debtors will increase their Plan payment by \$300.00 beginning in December 2013."

It appears that two of the additional provisions overlap payment months. Trustee would have no objection to correcting this matter in the order confirming.

The court will confirm Debtors' modified plan with the understanding that in the Order Confirming the Plan, Debtors will remedy the error concerning inconsistent payment terms, and clarify when the payment increase will take effect.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on September 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that in the Order Confirming the Plan, Debtors will remedy the error concerning inconsistent payment terms, and clarify when the payment increase will take effect.

26.	13-26547 -C-13 CYB-2	SALVATORE/SHELLIE PETRILLO Candace Y. Brooks	MOTION TO CONFIRM PLAN 9-5-13 [33]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 5, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27.	13-25648 -C-13	JAMES/JESSICA HEINLE	MOTION TO CONFIRM PLAN
	NBC-2	Eamonn Foster	8-28-13 [35]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Chapter 13 Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to set the Motion to Confirm the Plan for an evidentiary hearing on [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects to the confirmation of this Plan on various grounds. Debtors filed this case on April 24, 2013, initially proposing Plan payments of \$950.00 a month for 60 months, with no less than a 2% distribution to unsecured creditors. The Trustee objected to confirmation on the basis that the Plan did not represent Debtors' best efforts, were unable to pay, and did not disclose pertinent information. This court sustained the objection. Debtors then filed this amended Plan on August 28, 2013, which now proposes a plan that pays less, in the amount of \$903.50 per month, with no less than 1% to unsecured creditors. Debtors attribute the changes to the Plan as accounting for "changes in their income and expenses." Debtor continues to pay the initially proposed \$950.00 per month, and has not missed any payments.

Trustee objects to the current Amended Plan, and specifically requests an evidentiary hearing, on the following grounds:

(1.) The plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). Debtors have lowered the plan payment and the dividend, where Debtor continues to make the old payment. Debtors do not explain why the income and expenses filed with the court and declared true and correct under the penalty of perjury by both debtors, are now being characterized as not true by Debtors.

Schedule I is being reduced by \$738.00 per month, when line 17 did not indicate any increase or decrease in income was expected within a year. Debtor now maintains that certain expenses have increased by a total of \$2,220.00 and others have decreased by a total of \$2,390.93.

Debtors' declarations do not appear very credible at this point, so Trustee asks that this declaration be continued for discovery and an evidentiary hearing.

(2.) The Plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor's amendments do not appear credible. While the Amended Form 22C shows a negative \$29.49, this is after Debtor claims \$2,120.90 deductions in special circumstances including \$250.00 for education expenses for Joint Debtor and Son where Debtor has indicated that the son graduated from high school and support has terminated, while implies that the son is 18 years old and this is not an appropriate special circumstances. Debtors maintain an additional \$900.00 for vehicle operating expenses and \$200.00 for 2 trailers and a tractor, which also appear inappropriate; Debtors maintain that transportation expenses are now \$1,550.00 per month when Debtors had maintained that these expenses were \$500.00 per month.

Trustee also seeks proof of Debtors' income as Debtors have provided paystubs showing significant overtime.

Debtors' Response to Trustee's Objection, filed on October 15, 2013

October 22, 2013 at 2:00 p.m.

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Debtors accuse Trustee of wishing to re-litigate the previous documents which were objected to and rejected by the court, namely the previous Official Form B22C, and Debtors' original Schedules I and J. Debtors claim to have amended all of those documents, pursuant to Trustee's objection. Debtors assert that their detailed amendments are truthful, and that "every penny was accounted for in these amended documents." Debtors' Response, Page 2, Lines 5-6.

Debtors are peeved by Trustee's characterization of Debtors' conduct as deliberately trying to confuse, obfuscate, or distract the court. Trustee refers to payments made by Debtors, "without considering at what hardship the payments have been made," (Debtors' Response, Page 2, Line 10); for instance, Debtors do not go on vacation, have scheduled only \$50 a month for home maintenance, do not having a recreation budget, etc. Debtors also state that their issues with making the Plan payments have been resolved, as Debtors consulted their attorney to clear up their uncertainty regarding whether they actually did have to make the \$903.50 payment, and the manner in which Debtors could adjust the payment amount on the TFS automated system. Debtors state that they are prepared to make the first payment called for in the proposed Amended Plan.

To address the specific issues raised by Trustee in the Objection, Debtors respond with the following:

(1.) Good Faith: Trustee objected based on the differences between the Original Schedules I and J and the Amended Schedules I and J. Debtors state that certain changes were unexpected; as stated in the Debtors' Declaration in Support of the Motion to Confirm the First Amended Plan (Dkt. #37), Joint Debtor's son did not enter the military, as was thought or hoped at Debtors' 341 meeting, but has remained at home and is a dependent of the household while he attends Shasta College.

(2.) Best Efforts: Trustee objected based on the Special Circumstances listed in Debtors' Amended Official Form 22C. First, Joint Debtor's son, who is a dependent, has relatively minor expenses related to his schooling. Second, Debtors have vehicles which qualify for an extra deduction. Third, the trustee asks for proof of their income.

(a.) Debtors claim that at the time of the filing, many things were uncertain. Since then, "many things have settled down," and the expenses and listed income are the best that Debtors can project. As stated in Debtors' Declaration in Support of the Motion to Confirm the First Amended Plan (Dkt. #37), Joint Debtor's son continues to reside with the debtors and attends school with his mother. The average expenses and fees are disclosed.

(b.) With respect to Debtors' automobile operation expenses, Debtors maintain the operating expenses for their older vehicles are proper, due to their age and mileage. These are listed in the Special Circumstances of Official Form 22C to clarify what they are. Regardless, Debtors argue that they are "appropriate and justified." The additional expenses for the Tractor and two trailers are also explained and justified.

Debtors are paying on the debt that secures the tractor; it

would be safe to assume that since the Secured Creditor has not objected to this plan, that Secured Creditor does not object to the proposed maintenance and upkeep of their security. Furthermore, Debtors assume that since no other creditor has objected to this plan, they also do not object to the proposed expenses necessary to maintain and keep-up the other vehicles and trailers which may be liquidated for their benefit at some future time.

(c.) Debtors have lodged their most recent paystubs to support the amended Forms and Schedules as Exhibit A on Dkt. #51. As these paystubs show, Debtor husband does not receive overtime on every paycheck, and not in the amounts that "he used to receive it".

On October 15, 2013, Debtors filed a joint declaration attesting to the assertions contained in their Reply (as summarized above). Debtors assure the court that they are not trying to defraud their creditors, and that they operated under mistaken assumptions (like the belief that their son would leave home and join their military, which did not pan out) in crafting their Plan. Unforeseen events occurred and Debtors' finances changed substantially; now that things have "settled," Debtors can draft a Plan that more accurately reflects their financial situation.

The court's decision is to set this matter for an evidentiary hearing. Debtors can present updated evidence of their financials, and explain to the Trustee in detail their amended Schedules I and J, as well as their Amended Form 22C. Trustee will have the opportunity to examine Debtors and inquire about Debtors' changed income and expenses.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is set for an evidentiary hearing at [date] at [time].

28. 12-28651-C-13 ALEJANDRO/TISHIA SALAIS OBJECTION TO CLAIM OF US BANK,
PGM-4 Peter G. Macaluso N.A., CLAIM NUMBER 3 AND/OR
MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY(S) , FEES: \$1,250.00,
EXPENSES: \$0.00
9-3-13 [86]

Local Rule 3007-1(c)(1) Motion -Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 3, 2013. 44 days' notice is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). A creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to overrule the Objection to Claim. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

FACTS

On or about May 11, 2007, Debtors executed a Promissory Note with Washington Mutual Bank, FA, in the principal sum of \$432,000.000. On or about that same day, Debtors executed and delivered to Washington Mutual a Deed of Trust granting the lender a security interest in real property, commonly known as 27 Skorda Ct., Sacramento, California.

Creditor, U.S. Bank National Association, as Trustee for J.P. Morgan Chase Bank, National Association currently holds the Note and is entitled to enforce provisions of the Note and Deed of Trust. On or about November 7, 2011, Debtors and Creditor entered into a Home Affordable Modification Agreement, a copy of which is attached to Creditor's Exhibits as Exhibit #3. On May 3, 2012. Debtors filed a Chapter 13 bankruptcy petition.

On July 12, 2012, Creditor filed a Proof of Claim in the amount of \$495,723.29, with pre-petition arrears of \$3,397.51. This claim appears on the court docket as Proof of Claim #3-1. On September 7, 2012, Creditor filed an Amended Proof of Claim, which reflects a secured claim in the amount of \$494,320.88, with pre-petition arrears in the amount of \$1,704.10. This claim appears on the docket as Proof of Claim #5.

It should be noted that Debtors' instant Objection does not make any mention of the Amended Proof of Claim filed on September 7, 2012, and instead, references Creditor's old claim, filed on July 12, 2012.

DEBTOR'S OBJECTION, FILED SEPTEMBER 3, 2013

Debtors object on the basis that Creditor incorrectly asserted that

October 22, 2013 at 2:00 p.m.

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Debtors are in arrears for charges that pre-date the Modification of the Plan, and that these charges are still due. The filed Proof of Claim reflects an arrearage of \$3,397.51. The Claim Attachment shows various charges incurred in the period between March 10, 2009 to December 9, 2011.

It appears from the Home Affordable Modification Agreement, entered between Debtors and Creditor's predecessor on October 21, 2011, that the first modified payment of \$1,481.22 was due on November 1, 2011. (Modification Agreement, Pages 37-45). Debtors argue that any arrears that were incurred prior to the loan modification should not subject to arrears in the bankruptcy case. Debtor claims that the burden is shifted to Creditor to prove the reasonableness of its fee claim, pursuant to the 9th Circuit's holding in Atwood v. Chase Manhattan Mortgage, Co., 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003).

Debtors' pleadings refer to Creditor's original Proof of Claim, which lists the arrearage on the mortgage as \$3,397.51. The Amended Proof of Claim filed on September 7, 2012 by Creditor, however, instead lists \$1,704.10 as the amount of arrearage as of the time the case was filed.

ATTORNEYS FEES

Debtors seek attorney fees pursuant to Civil Code § 1717(a), which provides for attorney fees where the contract specifically provides for attorney's fees which are incurred to enforce the contract, to the prevailing party. Debtors claim to be the prevailing party in this dispute, and cite to Debtor's mortgage contract and Section 1717 in support of obtaining reciprocal attorney fees.

The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. Genis v. Krasne, 47 Cal. 2d 241 (1956). California Civil Code § 1717 provides for application of a contractual attorneys' fees provisions to any prevailing party to the contract and that the reasonable attorneys' fees shall be determined by the court.

Here, Debtors offer the Promissory Note and Deed of Trust (Exhibit 4: Note, Page 2, No. 6(E) and Exhibit 5: Deed of Trust, Page 8, No. 9(c)) as contractual instruments containing "broad" attorneys' fees provisions. The provisions found in both documents enable Debtor's Counsel to bring this motion under Civil Code § 1717.

Debtors further assure the court that the requested attorney fees are reasonable as evaluated by the standard set out in LaFarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum Corp., 791 F. 2d 1334, 1341-42 (9th Cir. 1986). The court in LaFarge discuss a variety of factors, including the time and labor required, the novelty and difficulty of legal questions involved, the skills necessary to properly render legal services, and other considerations in determining whether or not attorney fees are reasonable. Debtors offer the accompanying declaration of their attorney, Peter G. Macluso, to attest to the reasonableness of his time and efforts in preparing this Objection to Claim.

Debtors and Debtors' Counsel seeks \$1,250.00 in legal fees, for the services performed in preparing this Objection.

CREDITOR'S OPPOSITION, FILED OCTOBER 2, 2013

October 22, 2013 at 2:00 p.m.

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Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); see also United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Here, Debtors have challenged the amount of arrears included in Creditor's Proof of Claim.

Creditor directs the court's attention to the Amended Proof of Claim, entered into the court docket as Proof of Claim #5, as evidence that the amount of claim is valid. The only pre-petition arrears in Creditor's Amended Proof of Claim were for an escrow shortage in the amount of \$1,704.10; Creditor offers the Deed of Trust as evidence that Creditor is entitled to maintain an escrow balance for future insurance and/or taxes.

The reason for the Amended Proof of Claim, Creditor states, is that upon further review of Debtors' account and Creditor's Proof of Claim, it was determined that \$273.00 in appraisal/BPO fees and the foreclosure fees and costs of \$1,420.31 were intended to be capitalized in the modified balance. Due to a coding error, however, these fees and costs were not incorporated into the loan modification agreement. Creditor then agreed to waive the fees and filed an Amended Proof of Claim reflecting the waiver of these particular fees on September 7, 2012.

Creditor did not waive the escrow shortage, as it was not incorporated in the Home Affordable Modification Agreement, and is still outstanding. Paragraph 3 of the Deed of Trust and the Real Estate Settlement Procedures Act ("RESPA") entitles Creditor to hold an escrow balance for further insurance and/or taxes. Creditor is entitled to maintain a minimum balance equal to approximately 1/6th of the amount disbursed towards taxes and insurance on the subject loan. Paragraph 3 of the Deed of Trust provides that if there is a shortage of funds held in escrow, Debtor will pay Creditor the amount necessary to make up the shortage in accordance with RESPA, in no more than 12 monthly payments. Deed of Trust ¶ 3. Because the Debtors are in an active bankruptcy, Creditor added the shortage to its Proof of Claim to be paid through the Debtor's Chapter 13 Plan.

Creditor cites a 3rd Circuit case, In re Rodriguez, 629 F.3d 136, 142 (3d Cir. 2010), for the proposition that in the bankruptcy context, where a bankrupt debtor had an obligation to deposit monies with its mortgage lender to be escrowed for future taxes, insurance, and other charges, such obligations are pre-filing obligations, even if a mortgage lender might use those funds for payments of taxes and similar obligations first arising after the bankruptcy filing. In re Rodriguez, 629 F.3d 136, 142 (3d Cir. 2010). The court in Rodriguez recognized that although unpaid escrow amounts may not constitute "debt" under the terms of the mortgage, the unpaid escrow constitutes a claim.

CALCULATION OF ESCROW AMOUNT

Once the Debtors filed their instant bankruptcy case, J.P. Morgan Chase Bank ("Chase"), as Creditor's servicing agent, conducted an analysis of the escrow cushion as required by Fed. R. Bankr. P 3001(c)(2)(C) and

calculated \$1,704.10 as the amount to be \$1,704.10. Fed. R. Bankr. P 3001(c) (2) (C) states, in relevant part, that:

"If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim." Fed. R. Bankr. P 3001(c) (2) (C).

A copy of the Escrow Analysis was attached to the Amended Proof of Claim as Exhibit 5, and the methodology and statutory authority supporting Creditor's calculation of the \$1,704.10 escrow fee is outlined below.

As part of the escrow account analysis, Chase assumes that the "borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements, then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero...[Chase] then adds to the monthly balances the permissible cushion." 24 C.F.R. § 3500.17(d) (1) (i).

The escrow shortage is the amount by which the escrow account balance falls short of the target balance at the time of the escrow analysis. 24 C.F.R. § 3500.17(b) (provides the definition of "shortage"). The target balance and permissible cushion for an escrow account should be equal (or be less than) one-sixth of the estimated total annual escrow disbursements, or two monthly escrow payments (excluding PMI). 24 C.F.R. § 3500.17(d) (1) (I). While Chase is entitled to maintain a positive escrow cushion equal to 1/6th of the total projected annual escrow disbursements, in this particular loan, Chase only requires that the account to never fall below a zero dollar balance.

The escrow analysis for Debtors was calculated with an initial account balance of \$369.02, which was the escrow account balance as of June 2012, the first post-petition month. Prior to the loan modification, the escrow account had a balance of \$17,699.48, which was capitalized in the loan modification and reflected in the Escrow History. Based on the twelve-month projection, the lowest point in Debtor's projected escrow account analysis was in March 2013 of \$1,704.10. (Exhibit 6, Page 2). Thus, Chase determined that in order to maintain the minimum required balance of \$0.00 throughout the entire year, Chase had to collect the projected lowest point of \$1,704.10. By not collecting this shortage, the Debtors' escrow account would be negative from November 2012 through the rest of the twelve-month projection, and not in compliance with the terms of the Deed of Trust. Accordingly, the escrow shortage of \$1,704.10 is valid and recoverable. The calculation and payment of this shortage is what brings the escrow account in balance.

To summarize, Creditor determined that there was an escrow shortage on the loan in the amount of \$1,704.10, which it included in its Proof of Claim and Amended Proof of Claim.

ATTORNEY FEES OPPOSITION

Creditor objects to Debtors' request for attorney fees because Debtor's request is premature. Debtors have not demonstrated that they are the prevailing party and are making incorrect assumptions based on having missed and not reviewed the Amended Proof of Claim. As a result, Debtors are requesting filing fees for an objection made on unfounded assertions.

DEBTORS' REPLY TO CREDITOR'S OPPOSITION, FILED ON OCTOBER 15, 2013

Debtors take issue with the fact that Creditor and Creditor's counsel "believes it has the authority to discover the contractual error, correct their mistake to their own benefit, and withhold this information from the Court." (Debtors' Reply, Page 2, Lines 7-10). Creditor admitted that the Amended Claim was filed because further examination of Debtors' account revealed that due to a coding error, the \$273.00 appraisal/BPO fees and foreclosure fees and costs of \$1,420.41 were not incorporated into the modification agreement. Debtors continue to object to the claim because these costs were supposed to be capitalized in the modified balance.

Debtors express frustration that Creditor made this clerical error; it appears, however, that the \$273.00 appraisal/BPO fees and foreclosure fees and costs of \$1,420.41 were waived by Creditor and does not change what Debtors owe on the escrow amount that was included in the Loan Modification Agreement. The fees were not listed and were subsequently excluded from the Modification. The mistaken fees were not impounded and Debtors were not required to pay the fees that were originally intended to be capitalized into the modified monthly payments. Debtors argue that it is unreasonable for Creditor to not waive the escrow shortage because of its mistakes in calculating the Debtor's obligations, because Creditor's admitted errors do not add to the amount that Debtors owe on their modified loan, the court does not understand why the mistakes would be relevant in the Amended Proof of Claim.

Debtors repeat their argument that as the Claimant, Creditor has the affirmative burden of showing reasonableness of the claim. The court is satisfied, however, that the Creditor's extensive explanation of the manner in which the escrow payments were calculated and impounded on Debtors' modified monthly payments is reasonable and should be permitted.

COURT'S ANALYSIS

Creditor's calculations comply with the requirements established by 24 C.F.R. § 3500.17, which establishes the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. 24 C.F.R. § 3500.17(c)(5) states that the escrow cushion must be no greater than one-sixth of the estimated total annual disbursements from the escrow account. 24 C.F.R. § 3500.17(d)(2)(ii) enables a servicer to compute the escrow account analysis by setting the lowest monthly target balance, which must be less than or equal to one-sixth of the estimated total annual escrow account disbursement, or a lesser amount as specified by State law or the mortgage document.

Here, the predecessor Lender, Chase, conducted a escrow account analysis that determined the monthly payments and any deposits needed to establish or maintain the account. Although entitled to the one-sixth escrow cushion, Lender's policy was to make sure that the account never fell below a zero dollar balance. Lender took measures to prevent this by collecting on the projected lowest point of Debtors' escrow account, which dipped to its lowest point of \$1,704.10 in March of 2013.

As a result, the Proof of Claim containing the \$1,704.10 in arrears for the escrow shortage amount on the loan is valid, as the computations were done in accordance to 24 C.F.R. § 3500.17(d). Chase took the lowest monthly target balance and listed it as the escrow shortage amount.

Creditor attached the analysis statement to the Proof of Claim, as mandated by Fed. R. Bankr. P 3001(c)(2)(C). The escrow account statement, which was sent to Debtors, states projected escrow account balances and identifies the lowest account balance (in the Section entitled "Escrow Account Balancer," on Page 91 of Exhibit 5) as \$1,704.10. This statement was attached to the Amended Proof of Claim.

Thus, Creditor has met the burden of proving that the Amended Proof of Claim, filed on September 7, 2012, is reasonable.

ATTORNEYS FEES ANALYSIS

With regard to Debtors' request for attorneys' fees, the court is not satisfied that Debtors have proved that they are the "prevailing party" in this case. Cal. Civ. Proc. Code § 1032(4) states that a "prevailing party" includes:

"the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034." Cal. Civ. Proc. Code § 1032(4).

Debtors have not shown that they are the prevailing party in this action. The fees cited by Debtors' counsel pertain only to this objection, leading the court to believe that Debtor's counsel is attempting to recover fees and expenses incurred in solely working on this objection. This objection has not resulted, however, in a relief, dismissal, or any type of recovery for Debtors. Thus, Debtors cannot yet be considered the prevailing party under Cal. Civ. Proc. Code § 1032(4) with respect to this objection, and are therefore not entitled to collect attorneys fees from the work performed in filing this objection.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of the Franchise Tax Board filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim of US Bank, National Association, is overruled.

29. [12-39551](#)-C-13 LAMAR MANNING AND BRONWYN MOTION TO APPROVE LOAN
SAC-6 BRADLEY-MANNING MODIFICATION
Scott A. CoBen 10-7-13 [[104](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on October 7, 2013. 14 days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Approve Loan Modification. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors request authorization from the court to modify their loan agreement with Creditor, PNC Mortgage, N.A. Creditor holds a deed of trust against Debtors' Property, commonly known as 4260 Dymic way, Sacramento, California 95838.

The new principal balance on Debtors' loan will be approximately \$261,775.53. The interest rate is 4.0000%. The proposed payment consists of \$1,188.63 for principal and interest, and escrow/option insurance. All liens secured by the subject property will be paid in full, in a manner consistent with the Chapter 13 Plan. Debtors will not receive any cash from the loan modification. The balance of the pre-petition mortgage arrears, if any, shall be cured by the loan modification. A copy of the trial period loan modification agreement with PNC Mortgage, N.A., containing its precise terms, is attached to the instant motion as an exhibit. (Dkt. 107, Exhibit A).

The court will enter an order approving the trial period plan payments and requiring Debtor to submit a later motion to approve the final terms of the permanent loan modification once the trial period is complete.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Loan Modification is granted and the Debtor may commence making the required payments of \$1,188.63.

IT IS FURTHER ORDERED that once Debtor completes the trial period plan payments and receives a permanent loan modification offer from PNC Mortgage, N.A., a motion to approve the terms of the permanent modification will be presented to the court.

30. [11-49852](#)-C-13 GEORGE/BERNADINE ELLIOTT MOTION TO SUBSTITUTE PARTY
RAC-2 Richard A. Chan 9-6-13 [[28](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 6, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Substitute Party was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is grant the Motion to Substitute Party. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor and Successor-in-interest, Bernadine Elliot, seek permission from this court to proceed as though the death of the debtor, George A. Elliot, has not occurred. She seeks an order substituting her in the place of George A. Elliott, the current Debtor, to complete the administration of

this case. This Motion is brought pursuant to F.R.C.P. Rule 25(a) and F.R.B.P. 7025.

In support of the motion, Bernadine Elliot (the surviving spouse, co-debtor, and successor-in-interest) has filed a declaration that demonstrates that the substitution of party is in the best interest of the parties and in furtherance of the Chapter 13 Plan. Bernadine Elliot cites the following reasons in support of an order to substitute the parties in representing the interests of herself and the deceased:

(1.) The Chapter 13 Plan was confirmed on March 20, 2012.

(2.) On August 9, 2013, Debtor George A. Elliot passed away. A true and correct copy of his Death Certificate is attached hereto as Exhibit A (Dckt. #32).

(3.) Both the deceased debtor and Bernadine Elliot hold title to the residence commonly known as 303 11th Street, Williams, California, and the rental property commonly known as 1061 C. Street, Williams, CA 95987. Bernadine is the beneficiary of a life insurance policy with New York Life along with her son; this policy was listed and exempted on Debtors' filed schedules. Exhibit C.

(4.) The death of Debtor resulted in a decrease in income; at the time of the filing of the case, the decedent was receiving \$1,824.00 per month from Social Security. Upon the passing of Debtor, Bernadine began receiving her spouse's Social Security, for an overall loss in income of \$635.

(4.) Schedule J of the petition has been amended to reflect the reduction in certain monthly expenses as a result of the change in household size.

(5.) Successor-in-interest and Co-Debtor's son, Daniel Elliot, will contribute \$500.00 a month so that the Plan can successfully complete. Daniel attests to this contribution in the declaration attached to this motion, and this is reflected in Debtors' Amended Schedules I and J.

Chapter 13 Trustee Response

Chapter 13 Trustee has filed a statement of non-opposition to the Motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Substitute Party filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Substitute Party is granted.

October 22, 2013 at 2:00 p.m.

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CONTINUED FROM 9/24/13

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 29, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to set the Objection for an evidentiary hearing at [date] and [time] Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This matter was continued from September 24, 2013 for the Debtor, on or before October 9, 2013, to serve and file on the U.S. Trustee and Chapter 13 Trustee supplemental pleadings responding to the Trustee's objection. Response, if any, to the supplemental pleadings, are to be filed and served on or before October 16, 2013.

The Chapter 13 Trustee objected to confirmation of Debtor's Plan because the Plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). 11 U.S.C. § 1325(a)(4) requires that the value of a confirmable plan of property that will be distributed on account of each allowed unsecured claim, be more than the amount that would be paid on such claim if Debtor's estate were liquidated under Chapter 7.

Trustee argued that Debtor's bare opinion on a rental property listed on Schedule A, 1014 54th Street, Oakland, should not convince the Court as to the value of the property. Debtor's opinion is not accompanied by any additional evidence and site reports that shed light on the property's actual value, which Debtor now values at \$210,000.00.

Debtor had originally valued the property at \$322,000.00. Additionally, Debtor's opinion as to her actual interest in the property has changed. Debtor initially claimed a 1/6th interest in the property, at a value of \$46,000, and later changed the figure to a 1/2 interest at a value of

\$57,684. Trustee contends that according to Zillow.com, the value of the rental property could be as much as \$432,808, resulting in \$149,220.50 non-exempt equity for the Debtor, while Debtor proposes to pay the unsecured creditors a 30% dividend (approximately \$42,166.76).

Though the Trustee referenced Zillow.com, he did not provide the court with an appraisal or declaration from a real estate professional providing an opinion as to the value of the property (commonly known as a brokers price opinion). The court does have the Debtors statement under penalty of perjury on Schedule A that the Property has a value of \$46,000.00. Dckt. 1 at 8. Then, on July 9, 2013, the Debtor filed an Amended Schedule A stating that the Property has a value of \$210,000.00 and secures a debt in the amount of \$94,632.00, which leaves the Debtor a \$57,684.00 equity in the property for her 50% interest. Dckt. 29.

On Amended Schedule I, Id. at 8, the Debtor stated that she received \$1,600.00 in rental income a month from the Property. Since the Debtor has only a 50% interest, then the total rent would be \$3,200.00 a month for the property. On Amended Schedule J, Id. at 11, the Debtor listed the following expenses (which the court doubles, presuming that only 50% of the expense is listed): Insurance of \$200.00, Garbage/Sewer of \$160.00, Home Maintenance of \$580.00, for a total of \$940.00. The court adds an additional \$250.00 a month for property taxes (inferring that they are included in the mortgage payment).

This resulted in the property generating a net monthly income of \$2,410.00. Utilizing a capitalization rate of 6%, one could value a property generating net income of \$2,410.00 a month at \$482,000.00. If the Debtor was listing the full income and expenses, not merely her 50%, on Amended Schedules I and J, the property could have a value of \$241,000.00 (using a capitalization rate of 6% per annum).

Based on the evidence presented, the court could determine that this proposed plan satisfies the liquidation test required for confirmation. 11 U.S.C. § 1325(a)(4).

In addition, the Trustee had filed a Motion to Dismiss the Chapter 13 case based on the Debtor being in default \$886.00 as of September 13, 2013, with a further \$886.00 payment coming due on September 25, 2013. Motion, Dckt. 62. Trustee's Motion to Dismiss as since been withdrawn because Debtor made her plan payment.

It did not appear to the court that Debtors current plan complies with 11 U.S.C. § 1325(a)(4).

September 24, 2013 Hearing

At the hearing on Trustee's Objection, the court ordered Debtor, on or before October 9, 2013, to serve and file on the U.S. Trustee and Chapter 13 Trustee supplemental pleadings responding to the Trustee's objection. Response, if any, to the supplemental pleadings, are to be filed and served on or before October 16, 2013.

Debtor's Supplemental Pleadings

On October 9, 2013, Debtor filed two declarations with the court, the Declaration of Debtor Barbara Cockerham and the Declaration of Real

Estate Agent Celeste Bosley, that appear on the court's docket as Dkt. # 79 and 80 respectively.

Debtor's Declaration

In her declaration, Debtor attests that the subject property of 1014 54th Street, Oakland, and is her childhood home. She believes that the realtor's valuation of the property does not take into account the high crime rate, drug and gang activity in the neighborhood, and gang violence of the area in which the property is located. Declaration of Barbara Cockerham, ¶¶3-10.

Debtor states that she advised the trustee that certain websites erroneously list the property as located in Emeryville, which is a thriving suburban community just 2 blocks away from the property mentioned in the declaration. Because these sites mistakenly show that the property is in Emeryville (which is repudiated by the address reflected on the lease), the price of the home is inflated, and the listing is not accurate.

Debtor also states that the total amount of rent received for the house is \$1,600 a month, which is the fair market value, and that this number represents 100% of what Debtor and her brother receive from this tenant. The \$1,600.00 does not reflect a 50% interest. Additionally, all the expenses associated with the house were listed as 100% of the actual expenses, including costs for insurance, property taxes, maintenance fees, etc. Debtor states that it was never her intent to show that the expenses were 50% of her actual expenses.

Debtor reiterates that based on the realtor's professional opinion, and taking into consideration the additional factors of the gang injunction, increased gang activity, and crime statistics for incidents that happen within a 100-yard radius of the home, the value of the subject property is closer to \$210,000 than what is stated.

Declaration of Real Estate Agent Celeste Bosley

Declarant is a licensed real estate agent with over 6 years of experience in real estate. Based on her evaluation of the property commonly known as 1014 54th Street in Oakland, California on September 28, 2013, Declarant states that the property has a fair market value of \$320,000 as of the date of her review. Declarant based this number on her analysis of comparable sales, market trends, and other pertinent factors. No appraisal or certification of declarant as an appraiser were filed with the declaration.

Discussion - Set Evidentiary Hearing

The ultimate issue in dispute is the value of Debtor's rental property. Debtor has presented her opinion of value and the opinion of a real estate agent. Trustee has presented his opinion of value. None of the opinions are verified appraisals upon which the court can make a final ruling. Therefore, the court's decision to hold an evidentiary hearing to determine the value of the rental property. This will give Debtor and Trustee the opportunity to obtain an appraisal from a realtor or other professional appraiser to support or correct Trustee's valuation of the property.

Therefore, the court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to confirmation the Plan is set for an evidentiary hearing on **[date]** at **[time]**.

32. [13-29954](#)-C-13 DONALD/TAMMY LACHER MOTION TO VALUE COLLATERAL OF
CLH-1 Charles L. Hastings HSBC MORTGAGE SERVICES INC.
9-18-13 [\[25\]](#)

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 18, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by Debtor Donald Lacher's declaration. Debtors are the owners of the subject real property commonly known as 3130 Inyo Court, Ione, California. The Debtor seeks to value the property at a fair market value of \$130,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of

approximately \$206,246.51. Respondent Creditor HSBC Mortgage Services Inc.'s second deed of trust secures a loan with a balance of approximately \$60,929.30. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp.* (In re *Zimmer*), 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift* (In re *Lam*), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Mortgage Services Inc. secured by a second deed of trust recorded against the real property commonly known as 3130 Inyo Court, Ione, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$130,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

33.	13-31357 -C-13 CAH-1	MICHAEL/LISA BABICH C. Anthony Hughes	MOTION TO VALUE COLLATERAL OF UNITED GUARANTY CORPORATION 9-18-13 [17]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditor, respondent creditor's attorney, Chapter 13 Trustee, and the Office of the United States Trustee on September 18, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least

14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by Debtors Michael Babich and Lisa Babich's joint declaration. Debtors are the owners of the subject real property commonly known as 12641 Princeton Drive, Auburn, California. The Debtors seek to value the property at a fair market value of \$240,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$260,528.00. Respondent Creditor United Guaranty Corporation's second deed of trust secures a loan with a balance of approximately \$142,385.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is granted and
the claim of United Guaranty Corporation,
secured by a second deed of trust recorded
against the real property commonly known as
12641 Princeton Drive, Auburn, California, is
determined to be a secured claim in the amount
of \$0.00, and the balance of the claim is a

general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$240,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

34. [13-31358](#)-C-13 JOSE RUELAS MOTION TO VALUE COLLATERAL OF
CAH-1 C. Anthony Hughes BANK OF AMERICA, N.A.
9-18-13 [[14](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditor, the Chapter 13 Trustee, and the Office of the United States Trustee on September 18, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by Debtor Jose Rene Ruelas' declaration. Debtor is the owners of the subject real property commonly known as 10376 Danichris Way in Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$388,079.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$414,093.00. Respondent Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$76,629.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v.*

Investors Thrift (In re Lam), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A., secured by a second deed of trust recorded against the real property commonly known as 10376 Danichris Way, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$388,079.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

35.	13-30561 -C-13 NLE-1	DAWN FREEMAN Scott J. Sagaria	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 9-17-13 [18]
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Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposed confirmation of the Plan because secured debts were not provided for in the Plan. Debtor listed the secured debts of Bank of the West and Disney Vacation Time Share on Schedule D, but did not list the debts in the Plan. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), not providing the treatment of such debts could indicate that Debtor cannot afford the payments called for under the Plan because of additional debts, or that the debtor wants to conceal the proposed treatment of the creditor.

On September 17, 2013, however, Debtor filed an Amended Plan (Dckt. #24). A review of the Amended Plan shows that the debts for Bank of the West with respect to a 2010 GMC Terrain, and Disney Vacation Development, Inc., creditor for a Disney Vacation time share, have been listed as Class 4 Creditors.

Thus, the Debtor has corrected the issues raised by Trustee in regard to the original Plan. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled as moot.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because the Plan relies on a motion to value that was denied. Under 11 U.S.C. § 1325(a)(6), Debtor cannot afford to make payments or comply with the Plan because the Plan relies on the Motion to Value Collateral of Green Tree, which was heard and denied on September 10, 2013. Debtor has not re-set the motion to value to date. If the motion is not granted, the Plan will not have sufficient monies to pay the claim in full.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor filed an Amended Plan on October 15, which resolves some, but not all of the Chapter 13 Trustee's objections. In the instant Objection, Trustee opposed confirmation of the Plan on the following grounds:

(1.) Under 11 U.S.C. § 1325(a)(6), Debtor cannot afford to make payments or comply with the Plan because Debtor has proposed to value the secured claim of Western Federal Credit Union, but has not filed the required motions to value collateral to date.

On October 1, Debtor filed a Motion to Value Collateral of Western Federal Credit Union (Dckt. #48). The motion is set to be heard by this court on November 5, 2013.

A review of Debtor's Amended Chapter 13 Plan shows that the Plan still relies on this motion, listing the value of Western Federal Credit Union's secured claim as \$2,600, which is the amount requested in Debtor's Motion to Value. Western Federal Credit's current interest is, however, still valued at \$14,224.00.

Thus, Trustee's first objection to the Plan still stands.

(2.) Debtor had pending motions to avoid liens and value that were set for October 8, 2013. All three motions were heard and denied without prejudice for lack of service to the Chapter 13 Trustee by this court.

Debtor's Amended Plan appears to operate under the assumption that

the Motion to Value Collateral and Avoid Lien of the Bank of New York Mellon (Dckt. #15), the Motion to Avoid Lien of Target National Bank (Dckt. #35), and the Motion to Avoid Lien of Barclays Bank Delaware (Dckt. #26) would be granted. These motions were not granted, however, and Debtor may not be able to make the payments called for by the Plan.

Thus, Trustee's second objection is still applicable to Debtor's updated Plan.

(3.) Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6), as Debtor is proposing plan payments of \$2,200.00 for 6 months, while Debtor's monthly projected disposable income listed on Schedule J was listed as \$2,109.00, resulting in a difference of \$91.00.

Debtor filed Amended Schedules I and J on October 1, 2013. It appears that Debtor adjusted numbers for some of the expenditures listed on Schedule J, and added a "contribution from Son living in household" (Schedule I, line 13) to the "Other monthly income" sources, resulting in a monthly net income of \$2,217.00. This updated figure would enable Debtor to make all monthly plan payments, which is still listed as \$2,200 a month.

This appears to resolve the basis for Trustee's third objection.

(4.) Under 11 U.S.C. § 1325(b), the Plan does not represent Debtor's best effort; Debtor is below median income and proposes plan payments of \$2,200.00 for 60 months, with a 0% dividend to unsecured creditors. This has not changed with Debtor's current Plan, which still proposes \$2,200.00 at a 0% dividend distribution to unsecured creditors.

Trustee also mentions that Debtor's original Plan did not reflect her admission that her 29 year old son was contributing \$500.00 per month to household expenses, but this income has since been included in Debtor's Schedule Amended Schedule I (Dckt. #53).

Debtor has not corrected all the deficiencies of her Plan, and the Amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

38. [11-41271](#)-C-13 ERIK DEVUYST AND VELMA MOTION FOR CONSENT TO ENTER
CJO-1 POLK-DEVUYST INTO LOAN MODIFICATION
Chad M. Johnson AGREEMENT
10-4-13 [[60](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on October 4, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Consent to Enter into Loan Modification Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Consent to Enter into Loan Modification Agreement. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, JPMorgan Chase Bank, N.A. moves for approval to allow Debtors Erik Devuyt and Velma Jean NyEsha Polk-Devuyt to enter into and finalize their loan modification with Creditor. The Loan Modification Agreement amends and supplements the Note, which is secured by a first Deed of Trust that encumbers the real property commonly known as 1769 Andrews Cir, Suisun City, CA 94585. The Loan Modification Agreement provides for a lower interest rate and the capitalization of arrears into a modified principal balance.

A copy of the loan modification agreement with JPMorgan Chase, N.A., containing its precise terms, is attached to the instant motion as an exhibit. (Dkt. #63, Exhibit 1). The Loan Modification Agreement states that the modified principal balance on the Notes will be \$353,905.74, and that \$72,155.74 of the new principal balance will be deferred. Debtors will make consecutive monthly payments of principal and interest, in the amount of \$1,177.54, over the period of 480 months.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Consent to Enter Into Loan Modification Agreement having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Consent to Enter Into Loan Modification is granted.

39. [13-28572](#)-C-13 DANNY GERWER MOTION TO CONFIRM PLAN
SLH-2 Seth L. Hanson 9-4-13 [[26](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 4, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

40. [12-36182](#)-C-13 CYNTHIA DUNCAN MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso 9-5-13 [[80](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 5, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and

is confirmed. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on September 9, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41.	12-29284-C-13	YOUA VANG AND ONG THAO	OBJECTION TO CLAIM OF BANK OF
	PGM-2	Peter G. Macaluso	AMERICA, N.A., CLAIM NUMBER 9
			9-6-13 [32]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 6, 2013. 44 days' notice is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to sustain the Objection to Proof of Claim number 9-1 of Bank of America, N.A. and disallow the claim in its entirety. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors objects to Claim No. 9-1 of Bank of America, N.A., in the amount of \$49,288.77, with arrears of \$2,428.51. Debtors argue that the Proof of Claim (Claim #9) does not note that the real property securing the subject loan was foreclosed on in January 4, 2008, and seeks an order from

the court providing that the claim be disallowed in its entirety.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Debtors argue that Creditor has made neither made a showing nor presented any evidence, to substantiate the validity of the claim; there is no accounting of the balance on Debtors' account, and does not reflect that the real property was previously foreclosed. Although Trustee's Deed is attached, it does not reflect whether any payoff was made from the sale. Additionally, Creditor has not identified who the holder of the note is, as they are the servicer.

Debtors offer the Proof of Claim (Exh. A, Dckt. #36), and a Trustee's Deed Upon Sale, showing that the property commonly known as 772 19th Street, Sacramento, California was foreclosed in 2008. Co-Debtor Youa Vang authenticates the Trustee's Deed Upon Sale in his declaration, dated September 6, 2013.

ATTORNEYS FEES

Debtors seek attorney fees pursuant to Civil Code § 1717(a), which provides for attorney fees where the contract specifically provides for attorney's fees which are incurred to enforce the contract, to the prevailing party. The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). California Civil Code § 1717 provides for application of a contractual attorneys' fees provisions to any prevailing party to the contract and that the reasonable attorneys' fees shall be determined by the court. Debtors assert that they are the prevailing party in this case because Creditor did not provide sufficient documentation on an accounting of the claim, and did not perform an adequate cost analysis in preparing the claim.

The court is not persuaded Debtors are entitled to attorney's fees in this matter.

Debtors direct the court to Page 17 and 25 of Exhibit 1 for the appropriate contractual provision addressed § 1717. After looking and reviewing the document, the court is unable to locate the support for Debtors' contention. Part of the issue may be the difficulty of reading the document combined with the vague direction from counsel. From the court's perspective, there are no apparent attorneys' fees provisions in the Short Form Deed of Trustee's Deed Upon Sale.

The court, however, is satisfied that Debtors have fulfilled the burden of presenting substantial evidence to overcome the prima facie validity of Bank of America, N.A.'s Proof of Claim. The Trustee's Deed of

Sale demonstrates that Debtors' property, which they held as joint tenants, was foreclosed on and sold at a public auction on January 7, 2008, satisfying Debtors obligation. Furthermore, Creditor Bank of America did not file a response to Debtors' Objection.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of the Franchise Tax Board filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 9-1 of Bank of America, N.A. is sustained, and that the claim is disallowed in its entirety.

42. [13-29484](#)-C-13 JILL/RICHARD HILL OBJECTION TO CONFIRMATION OF
NLE-1 Michael O'Dowd Hays PLAN BY DAVID CUSICK
9-17-13 [[20](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g)., if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the Objection to November 19, 2013 at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Debtors did not appear at the First Meeting of Creditors held on September 12, 2013. Trustee does not have sufficient information to determine whether or not the Plan is suitable for confirmation with respect

to 11 U.S.C. § 1325. The Meeting has been continued to November 14, 2013.

(2.) Under 11 U.S.C. § 1325(b), it does not appear that the Plan represents Debtors' best efforts. Debtor is under the median income and proposes plan payments of \$361.00 for 60 months, with a 0% dividend to unsecured creditors.

Debtors list an expense of \$142.00 on Schedule J for a furniture lease, but did not indicate the terms of the lease and if it completes earlier than the 60 month Plan. Debtor has listed on Schedule B that their miscellaneous household goods are worth \$2,500 (Dckt. #1, Page 13, Item 4). As a result, Trustee asserts that paying \$8,5200.00 for the household goods (\$142.00 for 60 months) is not reasonable.

Debtors indicate on Line #17 on Schedule I that "Husband's SDI Benefits are Pending," but does not indicate the amount of SDI and when Debtor husband will start receiving this amount. Debtor does not propose an increase in plan payments when the SDI is received.

(3.) The treatment of priority tax debt is unclear. Debtors list the Internal Revenue Service on Schedule E, indicating that the total amount of IRS priority debt is \$12,959.25, and the amount not entitled to priority is \$0.00. Debtors also list the Franchise Tax Board on Schedule E in the amount of \$537.98 as priority debt, and the amount not entitled to priority is \$0.00. The Plan only provides for one claim as priority--the IRS in Class 5 at \$5,124.74. The Additional Provisions propose to pay the IRS at \$86.00 per month, and explain that both claims are only entitled to general unsecured treatment except for the one priority portion.

The Internal Revenue Service has filed an amended Claim (Claim #1, filed on August 23, 2013), asserting a priority amount of \$4,990.18, and general unsecured amount of \$7,738.48. Trustee concedes that treatment of those claims in the Plan is probably correct, but raises this issue out of an abundance of caution.

(4.) The Plan may be causing unfair discrimination to the unsecured creditors, pursuant to 11 U.S.C. § 1322(b)(1). See In re Sperna, 173 B.R. 654 (9th Cir. BAP 1994). Debtor husband lists his 2010 Honda Civic in Class 2 of the Plan, but Debtors do not propose to value this automobile. The debt was incurred in 2010 based on the attachment to the Proof of Claim filed by 1-800 Loan Mart on July 25, 2013, Court Claim #2. Debtors have not filed a motion to value to date.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Per Trustee's request, the court will continue the hearing on this Objection to November 19, 2013, which is after the continued meeting of creditors, to allow Debtor to address the objection. Debtor testified at the meeting of creditors that Richard Hill was out of town on business until November. Debtor will be examined by Trustee to resolve the issues raised in the Objection.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to confirmation the Plan is continued to November 19, 2013 at [time] to allow Debtor Richard Hill to attend the continued meeting of creditors and address the objection.

43. [13-30688](#)-C-13 PATRICIA BURRITT OBJECTION TO CONFIRMATION OF
NLE-1 Gary Ray Fraley PLAN BY DAVID CUSICK
9-17-13 [[19](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Under 11 U.S.C. § 1325(a) (6), Debtor cannot afford to make the payments or comply with the plan. Debtor's Plan relies on the Motion to Value Collateral of Household Finance, which is set for hearing on October 29, 2013. If the motion is not granted, the Plan will not have sufficient monies to pay the claim in full.

(2.) Debtor has listed the arrears of Southgate Garden HOA dues to be paid in Class 1 of the Plan. It does not appear that this is a long term debt and does not complete after the 60 month duration period of the Plan. Trustee is not certain that this debt is properly listed in Class 1.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

44.	13-32090 -C-13 JT-1	JEFFREY/MELANIE PARR John A. Tosney	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 9-19-13 [11]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 19, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the declaration of James A. Chaussee, a

licensed Real Estate Appraiser. The motion states that Debtor is the owner of the subject real property commonly known as 9504 Tonkin Drive, Orangevale, California. The Appraiser states that based upon his analysis of comparable sales, market trends, compliance issues, pertinent economic factors, and his personal inspection of the property on July 7, 2013, the fair market value of the subject property is \$221,500.00.

The first deed of trust, held by Wells Fargo Home Mortgage, secures a loan with a balance of approximately \$267,288.00. Wells Fargo Bank, National Association's second deed of trust secures a loan with a balance of approximately \$49,934.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp.* (*In re Zimmer*), 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift* (*In re Lam*), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, National Association, secured by a second deed of trust recorded against the real property commonly known as 9504 Tonkin Drive, Orangevale, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$221,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

45. [12-24593](#)-C-13 DENNIS/BARBARA COOPER MOTION TO MODIFY PLAN
CAH-3 C. Anthony Hughes 9-16-13 [[79](#)]

CALENDARED IN ERROR. HEARING SET FOR OCTOBER 29, 2013 at 2:00 pm.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 30, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8017 36th Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$93,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$190,836.00. Heritage Community Credit Union's second deed of trust secures a loan with a balance of approximately \$50,479.09. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Heritage Community Credit Union secured by a second deed of trust recorded against the real property commonly known as 8017 36th Avenue, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$190,836.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

47. [13-27796](#)-C-13 EDWARD TORRES MOTION TO CONFIRM PLAN
MEV-1 Marc Voisenat 8-28-13 [[29](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 28, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

48. [13-21599](#)-C-13 DENNIS/GERRIE BAKER MOTION TO DISMISS CASE
SCL-2 Steven C. Lynes 9-10-13 [[48](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, Chapter 13 Trustee, and Office of the United States Trustee on September 13, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek to voluntarily dismiss their Chapter 13 case after it was converted from Chapter 7. Debtors state that in this case, there is no evidence to suggest that Debtors engaged in any bad faith conduct, fraud, or abuse of the bankruptcy process, and that the conversion to Chapter 13 was made in good faith.

October 22, 2013 at 2:00 p.m.

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Alternatively, Debtors request dismissal of the proceeding pursuant to FRCP Rule 60(b)(1) based upon a declaration of fault submitted by Debtor's counsel, in which counsel concedes that he miscalculated Debtors' homestead exemption as a result of his delegation to an attorney who Debtor's counsel reasonably understood was competent to evaluate and prepare Debtors' petition.

Trustee's Opposition

Chapter 13 Trustee objects to Debtors' motion on the following grounds:

(1.) Debtors cite authority for the motion as either 11 U.S.C. § 1307(b) or FRCP 60(b)(1). However, on June 13, 2013, this case was converted from Chapter 7 to Chapter 13 under 11 U.S.C. § 706 (Dkt. 25). 11 U.S.C. § 1307(b) states that:

On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter

This case was converted under 11 U.S.C. § 706, so 11 U.S.C. § 1307(b) does not apply. Trustee agrees that Debtors may seek dismissal under 11 U.S.C. § 1307(c), which requires cause that was not alleged in the instant motion. Debtors do not cite sufficient legal authority in moving to dismiss the case.

(2.) Debtors may only dismiss a voluntary Chapter 7 only if they prove that it will not prejudice creditors. In re Bartee, 317 B.R. 362, 366 (9th Cir. 2004). With respect to Chapter 13 cases, 11 U.S.C. § 1307(c), when making the determination as to whether to grant a motion to convert under Section 1307(c), the bankruptcy court "must be guided by what is in the best interest of the estate and creditors." In re Sobczak, 369 B.R. 512, 519 (B.A.P. 9th Cir. 2007).

Debtors did not make a showing that dismissing this case would be beneficial and in the best interest of the estate and creditors under 11 U.S.C. § 1307(c).

(3.) Debtors seek to dismiss the case to protect the \$152,000 of equity in their residence,, and argues that the equities of the situation (that there is no bad faith, misconduct, or abuse that has been shown) militate in favor of dismissal of this case.

Debtors admitted to filing the conversion to Chapter 13 and the Plan to avoid the Chapter 7 Trustee's Notice of Assets and potential liquidation of assets. Debtors filed a Plan and amended schedules on July 9, 2013, but did not serve the Plan or file a Motion to Confirm the Plan. On July 16, 2013, Debtors filed a First Amended Plan (Dckt. #38), proposing monthly payments of \$900 per month for 60 months proposing to pay their ongoing mortgage held by the Corley Phillips Family Trust, as a Class 2 Creditor, and a 0% dividend to general unsecured claims.

To date, Debtors have made one payment of \$900 on August 2, 2013, and are currently delinquent \$900. Another payment of \$900 was due on September 25, 2013, and neither party indicates whether this has been paid.

In the Declaration of Dennis Baker, Debtors indicate that they anticipated a Plan payment of not more than \$1,000, and their Plan only proposes \$900. Based on this Declaration, Trustee suspects that Debtors have at least \$1,000.00 per month in disposable income that they could contribute back to a Chapter 13 Plan. Debtors are attempting, however, to dismiss the case, rather than convert back to Chapter 7 or propose a confirmable plan that could propose a sale or refinancing of property so as to pay in the non-exempt equity.

Debtors sought to discharge their admitted \$161,000 in unsecured debt and pay only their secured mortgage payment, while maintaining their equity in real and personal property. Debtor husband states that the Chapter 7 was filed for the purpose of discharging the \$161,000 in unsecured debt (Declaration of Dennis Lee Baker, Page 2, Lines 1-2). Trustee argues that Debtors purposely sought out bankruptcy counsel to benefit from the relief provided by a bankruptcy filing, but when they discovered that they would be required to pay their unsecured claims, they decided to handle debts on their own.

Debtors are entitled to their \$75,000 exemption on equity in real property, but beyond that amount, Debtors are required to pay what they would under a Chapter 7 liquidation analysis under 11 U.S.C. § 1325(2)(4). Dismissal of the case will reduce the estate and presumably the distribution to creditors by \$77,000 (the difference between the \$152,000 exemption Debtor will soon have available, and the \$75,000 Debtor can currently claim).

According to Trustee, the appropriate path for Debtors is either to convert back to Chapter 7, pursuant to 11 U.S.C. § 1307(c), or file a confirmable Chapter 13 Plan.

Discussion

As the Trustee made clear, Debtors are moving under the wrong section of the Bankruptcy Code. Section 1307(b) is not applicable in this matter because Debtors' case was previously converted under 11 U.S.C. § 706(a) from Chapter 7 to Chapter 13. The applicable Bankruptcy Code section is § 1307(c).

Pursuant to 11 U.S.C. § 1307(c), on request of a party in interest, and after notice and a hearing, the court may convert a Chapter 13 case to a Chapter 7 case or dismiss a case under Chapter 13, whichever is in the best interests of creditors and the estate, for cause. Debtors argue that the "totality of the circumstances" should be used when determining whether "cause" exists and that because Debtors did not engage in bad faith, abuse, or fraudulent activity, there is nothing preventing the court from dismissing the case. Debtors do not argue that dismissal is in the best interests of its creditors and the estate, a key element of § 1307(c).

Debtors have not met their burden demonstrating that dismissal of this case is in the best interest of creditors and the estate, as required under 11 U.S.C. § 1307(c).

Debtors make an alternative argument for dismissal of their case under Fed. R. Civ. P. 60(b)(1), made relevant through Fed. R. Bankr. P. 9024. FRCP 60(b)(1) provides that on a motion, the court may relieve a party from a final order, judgment, or proceeding for mistake, inadvertence, surprise, or excusable neglect . . .” Here, there is no final order or judgment and while its possible a pending bankruptcy case falls within the purview of “proceeding,” the court does not find it necessary to engage in such a discussion to resolve the present matter.

A third option for the court, not addressed by either Debtor or Trustee, is 11 U.S.C. § 305(a), which permits the court, after notice and a hearing, to dismiss a case if the interests of creditors and the debtor would be better served by such dismissal. Here, it is not clear if both the interests of the Debtors and creditors would be better served by dismissal.

The court is asked to decide whose interests are better served by what action in this matter. One argument is to dismiss the case to protect the interests of the Debtors, keeping in mind the mistake of Debtors’ counsel regarding Debtors’ homestead exemption. The other argument is to convert the case back to Chapter 7 or keep the case in Chapter 13 to better serve the interests of the creditors, who would benefit for the proper homestead exemption, which frees up \$77,000.00 for distribution.

Debtors are not currently paying on their Chapter 13 plan and have not set a Motion to confirm their Chapter 13 plan. Debtors’ lack of prosecution does not convince the court that leaving the Debtors in Chapter 13 is the most reasonable decision. Reconversion to Chapter 7 is an option; however, it does appear genuine that Debtors entered into their original Chapter 7 bankruptcy under the misguided belief that they would be able to claim a homestead exemption in the amount of \$150,000.00. The mistake of Debtors’ counsel threw Debtors into a totally unanticipated situation. The resulting equity, after accounting for the proper exemption, is substantial at \$77,000.00. It would be unfair to force Debtors to continue to prosecute a case entered into with the understanding that they would able to claim an additional \$75,000.00 in their home as exempt. Therefore, the court’s decision is to grant Debtors’ Motion to Dismiss.

The court is mindful; however, of the amount of time spent working on this case by both the Chapter 7 and Chapter 13 Trustee. Therefore, the court will order Debtors to pay the fees and expenses of both the Chapter 7 Trustee and Chapter 13 Trustee associated with Debtors case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted.

IT IS FURTHER ORDERED that Debtors will compensate the Chapter 7 Trustee, Kimberly Husted, and Chapter 13 Trustee, David Cusick for the fees and expenses expended during the pendency of Debtors' bankruptcy case.